usually calculated by the cost of making them good. In this case, according to the plaintiff, the cost was $5,500.

Now it was clearly of the essence of the contract that the plaintiff's house was to be similar to Safarwan's house at Geylang Serai and I construe the word "similar" as substantially similar in all respects. While the evidence in this matter is not as clear as it might be it appeared that Safarwan's house was a well constructed, well finished and completed structure and he was very pleased with it. The plaintiff's house, quite clearly, was not. I think some of the work carried out by the new contractor who was called in was due to the necessity for repairs caused by fair wear and tear and that in some instances materials of better and more expensive quality were used than were originally within the contemplation or intention of the parties or used in the construction of Safarwan's house. I think the sum of $5,500 therefore is too high a figure. It is difficult to make an exact assessment of the amount required but after giving the matter the best consideration I can on the materials available I consider a figure of $3,500 is appropriate. From this sum must be deducted the $1,500 due to the defendant under the contract, leaving a balance of $2,000 to which must be added a sum of $290 being the architect's fee.

In the result, therefore, there must be judgment for the plaintiff for $2,290 and costs.

Judgment for the plaintiff.

Solicitors:—*Osborne-Jones & Redrup; Murugason & Co.*

LEE KHOON CHENG & ORS. v. REGINA

[A.Cr.J. (Ambrose J.) July 5, 1963]

[Singapore — Magistrate's Appeal No. 283 of 1962]

Gaming—Gaming in public—Common Gaming Houses Ordinance, 1961 s.7(2)—Public place—Meaning of —Onus—Presumption in s.7(7) of the Ordinance.

"Public place" and "place" for purposes of gaming in public are defined in section 2(1) of the Common Gaming Houses Ordinance, 1961. To prove that a place is a public place all that need be proved is that the place is one to which the public has or may have access. The prosecution is not required to prove that the place is one to which the public have a right of access.

When a person is shown to be playing a game of chance or mixed game of chance and skill in a public place, a presumption arises under section 7(7) of the Ordinance that the person was gaming in public unless the contrary is proved.

Case referred to:—

(1) *Brannan* v. *Peek* [1947] 2 All E.R. 572.

MAGISTRATE'S CRIMINAL APPEAL.

R. Murugason for the appellant.

R. S. Chapkhana (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ambrose J.: The four above-named appellants were charged with the offence of gaming in public under section 7(2) of the Common Gaming Houses Ordinance, 1961. It was alleged that they on or about the 22nd November, 1962, at about 10.30 p.m. at a coffee-stall at Kitchener Road, Singapore, did game in a public place by playing a game of mahjong with chips. They were convicted and sentenced to a fine of $40 each by a Magistrate.

Two points were taken by counsel for the appellants. The first was that the hall where the offence was alleged to have been committed was not a public place. It was said that the coffee-stall was in the front portion of the premises and closed at 9 p.m.; that the hall ceased to be part of the coffee-stall after 9 p.m.; and that the public had no right of access to it. It was argued that a place cannot be said to be a public place unless the public have a right of access. Counsel relied on the case of *Brannan* v. *Peek*(1). In that case it was decided that a public house is not a public place within the meaning of section 1(4) of the Street Betting Act, 1906, because it is not a place to which the public have an unrestricted or a restricted right of access. Section 1(4) provides:

> "the word 'public place' shall include any public park, garden, or seabeach, and any unenclosed ground to which the public for the time being have unrestricted access, and shall also include every enclosed place (not being a public park or garden) to which the public have a restricted right of access, whether on payment or otherwise, if at or near every public entrance there is conspicuously exhibited by the owners or persons having the control of the place a notice prohibiting betting therein."

It is to be observed that section 2(1) of the Common Gaming Houses Ordinance, 1961, provides:

> " 'public place' means any place to which the public has or may have access . . . . ;
>
> 'place' means any house, office, room or building and any place or spot, whether open or enclosed,. . . . ;"

To prove that the hall was a public place, the prosecution did not have to prove that the public had a right of access, restricted or otherwise, into the hall. All that the prosecution had to prove was that the hall was a place to which the public has or may have access. The Magistrate found that the hall was such a place. I can see no reason for setting aside that finding.

The second point taken by counsel for the appellants was that the prosecution did not prove that the players were playing for money or

money's worth. The prosecution was entitled, however, to rely on the presumption contained in section 7(7) of the Ordinance. This subsection provides:

"Where it is shown that any person has been found to be playing any game of chance or any mixed game of chance and skill in a public place, it shall be presumed until the contrary is proved that such person was gaming in such public place."

"Gaming" means the playing of any game of chance or of mixed chance and skill for money or money's worth. The prosecution evidence was that no money passed but that chips were used. The defence evidence was that the game was not for money or money's worth and that the first, third and fourth appellants were merely teaching the second appellant how to play mahjong. This evidence was disbelieved by the Magistrate; and it failed to raise any doubt in the Magistrate's mind as to the guilt of the appellants. In the circumstances I find no ground for complaint.

For the above reasons I dismiss the appeal and affirm the convictions and sentences.

Appeal dismissed.

Solicitors:—*Murugason & Co.*

LEMBAGA ALAT-ALAT PEMBAJARAN LUAR NEGERI & ORS. v. HORNBEAM CO. LTD. & ANOR.

[C.A. (Tan Ah Tah, Buttrose and Ambrose JJ.) July 18, 1963]

[Singapore — Civil Appeal No. 6 of 1963]

Practice and Procedure—Application to strike out plaintiff on the ground of improper joinder—Order of Court joining party which had come into existence after commencement of action—Whether proper—R.S.C. 1934, O. XVI rr.1 & 11, O. XVIII r.4, O. LI r.23.

The provision in Order XVI rule 11(2) for the striking out of names of any parties who have been improperly joined refer to the action as framed by the plaintiffs. The improper joinder of parties referred to in rule 11(2) is the misjoinder of parties referred to in rule 11(1): and misjoinder in this context means the joinder of any person as a party to an action contrary to the provisions of the Rules of the Supreme Court.

Order XVI rule 1 provides who may be joined as plaintiffs in one action. Misjoinder of plaintiffs is therefore the joinder of persons as plaintiffs in the action as framed by the plaintiffs where such joinder is not permitted by Order XVI rule 1.

In this case as the Bank Koperasi was not joined as a plaintiff in the action as framed by the first and second plaintiffs at the commencement of the action (the Bank Koperasi then not being in existence) there was no joinder of the Bank Koperasi as a plaintiff contrary to the provisions of Order XVI rule 1. As the Bank Koperasi was added as a plaintiff by an order of Court under Order XVIII rule 4 the joinder was not an improper joinder under Order XVI rule 11, and the application was misconceived.

COURT OF APPEAL.

A. P. Godwin for the appellant.

E. W. Barker for the respondents.

Cur. Adv. Vult.

Ambrose J.: This is an appeal from an order dismissing an application by the first defendant by summons in chambers dated the 19th October, 1962. The application was for the striking out of the name of the third plaintiff, Bank Koperasi, Tani Dan Nelajan, on the ground of improper joinder. It was made under Order 16, rule 11, of the Rules of the Supreme Court, 1934. This rule provides as follows:

"11. (1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy, so far as regards the rights and interests of the parties actually before it.

(2) The Court or a Judge may, at any stage of the proceedings either upon or without the application of either party, and on such terms as appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

In my judgment, the provision in Order 16, rule 11(2), for the striking out of the names of any parties who have been improperly joined refers to the action as framed by the plaintiffs. In my view, the improper joinder of parties referred to in rule 11(2) is the misjoinder of parties referred to in rule 11(1): and misjoinder in this context means the joinder of any person as a party to an action contrary to the provisions of the Rules of the Supreme Court. Order 16, rule 1, states who may be joined as plaintiffs in one action. This rule provides as follows:

"All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise."

Misjoinder of plaintiffs is, therefore, the joinder of persons as plaintiffs in the action as framed by the plaintiffs where such joinder is not permitted by Order 16, rule 1. The Bank Koperasi was not joined as a plaintiff in the action as framed by the first and second plaintiffs. At the commencement of the action, the Bank Koperasi was, in fact, not in existence. There was no joinder of the Bank Koperasi as a plaintiff contrary to the provisions of Order 16, rule 1. It must be pointed out that the Bank Koperasi was made a plaintiff by an order of Court made on an application by the first and second plaintiffs and the Bank Koperasi by sum-